

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

LISA WAITE,

Plaintiff,

v.

Case No. 1:22-cv-986

EDURO HEALTHCARE, LLC,
CABEZON NURSING AND REHAB, LLC,
JOSEPH FOXWOOD, JOLENE GUTIERREZ,
JERA BAILEY, and CATE DYER,

Defendants.

NOTICE OF REMOVAL

Defendants Eduro Healthcare, LLC, Cabezon Nursing and Rehab, LLC, Joseph Foxwood, Jolene Gutierrez, Jera Bailey, and Cate Dyer (together referred herein as “Defendants”) enter their limited appearance and hereby remove the above-captioned action from the Thirteenth Judicial District Court of New Mexico, County of Sandoval (Case No. D-1329-CV-2022-01218) to the United States District Court for the District of New Mexico, pursuant to 28 U.S.C. §§ 1331, 1441(a), 1446. In support of this Notice of Removal, Defendants state as follows:

1. Plaintiff commenced this action in the Thirteenth Judicial District Court (Sandoval County) as case number D-1329-CV-2022-01218, and was deemed by the court to have filed her Complaint for (a) Violation of the Family and Medical Leave Act (“FMLA”) Interference § 2615(a)(1), (b) Violation of the FMLA Wrongful Termination, (c) Violation of the Human Rights Act Discriminatory Discharge on Serious Medical Condition, (d) Violation of the Human Rights Act Discriminatory Discharge on Age, (e) Violation of the Human Rights Act

Failure to Accommodate. A true and accurate copy of the Complaint filed in the state court action is attached to this Notice of Removal as Exhibit A.

2. Removal is appropriate since Plaintiff raises a federal question of law under the FMLA, pursuant to 1441(a).

3. This Notice of Removal is timely filed. See 28 U.S.C. § 1446(b). Defendants Cabezon Nursing and Rehab, LLC, Joseph Foxwood, and Jolene Gutierrez were served on November 30, 2022. Defendants Cate Dyer and Jera Bailey were served on December 5, 2022. Defendant Eduro Healthcare, LLC has still not yet been served to date.

4. When a civil action is removed solely under section 1441(a), all defendants who have been properly joined *and served* must join in or consent to the removal of the action. 28 U.S.C. § 1446(b)(2)(A). However, a defendant's consent to removal is not necessary where he or she has not been served at the time another defendant files its notice of removal. *Zambrano v. New Mexico Corr. Dep't*, 256 F. Supp. 3d 1179, 1181–82 (D.N.M. 2017).

5. Upon information and belief, and based upon the Thirteenth Judicial District Court's Docket, Defendant Eduro Healthcare, LLC has not been properly served. A return of service of summons has not been filed on behalf of Defendant Eduro Healthcare, LLC in the Thirteenth Judicial District Court. However, all Defendants properly served and not yet served have consented to removal and such consent for each is being filed synonymously.

5. The state court in which this action was commenced is within this Court's district. As set forth below, this Court has original jurisdiction over the subject matter of Plaintiff's claim under the FMLA § 2615(a)(1) et seq. Therefore, this action is properly removed to this Court, pursuant to 28 U.S.C. §§ 1331, 1441(a) and 1446.

9. Supplemental jurisdiction over Plaintiff's pendant state law claims is proper pursuant to 28 U.S.C. § 1367(a) and common law. The Court has supplemental jurisdiction to hear New Mexico State Law claims under Article VI, Section 13 of the New Mexico State Constitution. Such claims are common in that they pertain to the same alleged facts.

10. Defendants are filing written notice of this removal with the Clerk of the State Court in which the action is currently pending pursuant to 28 U.S.C. § 1446(d). Copies of the Notice of Filing Notice of Removal, together with this Notice of Removal, are being served upon Plaintiff pursuant to 28 U.S.C. § 1446(d).

WHEREFORE, Defendants respectfully removes this action from the Thirteenth Judicial District Court, County of Sandoval, State of New Mexico, to this Court, for trial and determination.

Respectfully submitted,

RODEY, DICKASON, SLOAN, AKIN & ROBB, P.A.

By /s/ Samantha M. Hults

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